

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JADE EMORY,	)	CIVIL NO. 05-00671 SOM/LEK
	)	
Plaintiff,	)	ORDER OVERRULING PLAINTIFF'S
	)	OBJECTION TO THE SUBSTITUTION
vs.	)	OF THE UNITED STATES AS A
	)	DEFENDANT
UNITED STATES DEPARTMENT OF	)	
HOUSING AND URBAN	)	
DEVELOPMENT, et al.,	)	
	)	
Defendants.	)	
	)	

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ORDER OVERRULING PLAINTIFF'S OBJECTION TO THE  
SUBSTITUTION OF THE UNITED STATES AS A DEFENDANT

On July 27, 2007, Defendants United States Department of Housing and Urban Development, Alphonso Jackson, Charles Hauptman, Anne Quesada, and Michael Flores (collectively, "Defendants") filed a Notice of Substitution of United States as Defendant, stating that "the United States of America is substituted as defendant herein in place of defendants Charles Hauptman, Anne Quesada, and Michael Flores."<sup>1</sup> Notice at 2 (citing 28 U.S.C. § 2679(d)(1)). On August 7, 2007, Plaintiff Jade Emory ("Emory") filed an objection to the substitution, which the court overrules.

Pursuant to 28 U.S.C. § 2679(d)(1),

Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim

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<sup>1</sup> The Notice of Substitution neither concerns nor seeks to substitute Defendant Alphonso Jackson.

arose, any civil action or proceeding commenced upon such a claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

See also Gutierrez de Martinez v. Lamagno, 515 U.S. 417, 431 (1995) ("When the Attorney General has granted certification, if the case is already in federal court . . . , the United States will be substituted as the party defendant."). The Attorney General has delegated his authority to make such a certification to the United States Attorneys. Meridian Int'l Logistics v. United States, 939 F.2d 740, (9<sup>th</sup> Cir. 1991) ("The Attorney General, pursuant to his authority under 28 U.S.C. § 510, has delegated this authority to the United States Attorneys.") (citing 28 C.F.R. § 15.3)).

Attached to Defendants' Notice of Substitution is the Certificate of Edward H. Kubo, Jr. ("Kubo"), in which Kubo says he is "the United States Attorney for the District of Hawaii." Certificate of Edward H. Kubo, Jr., ¶ 1. Kubo also certifies that "Defendants Charles Hauptman, Anne Quesada, and Michael Flores were acting within the scope of their employment for the United States Department of Housing and Urban Development in taking the actions alleged in the Second Amended Complaint." Id. ¶ 3. Given Kubo's certification and the filing of this action in a United States district court, § 2679(d)(1) mandates that "the

United States shall be substituted as the party defendant" for Hauptman, Quesada, and Flores. The substitution of those Defendants by the United States is therefore proper, and the court overrules Emory's objection.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, August 9, 2007.



  
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Susan Oki Mollway  
United States District Judge

Jade Emory v. United States Department of Housing and Urban Development, et al., Civ. No. 05-00671 SOM/LEK; ORDER OVERRULING PLAINTIFF'S OBJECTION TO THE SUBSTITUTION OF THE UNITED STATES AS A DEFENDANT.